

JCH7TONS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
2-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 569 (ER)

5 JAMES TONER,

6 Defendant.

7 -----x
8 New York, N.Y.
9 December 17, 2019
10 10:45 a.m.

11 Before:

12 HON. EDGARDO RAMOS
13 APPEARANCES
14 GEOFFREY S. BERMAN
15 United States Attorney for the
16 Southern District of New York
17 BY: OLGA ZVEROVICH
18 Assistant United States Attorney
19 RODNEY VILLAZOR
20 Attorney for Defendant
21
22
23
24
25

JCH7TONS

1 (In open court)

2 (Case called)

3 MS. ZVEROVICH: Good morning, your Honor. Olga
4 Zverovich for the government.5 MR. VILLAZOR: Good morning, your Honor. Rodney
6 Villazor for James Toner, who is seated beside me.

7 THE COURT: And good morning to you all.

8 This matter is on for sentencing. You have reviewed
9 the presentence report last revised on May 1, 2019, prepared by
10 U.S. Probation Officer Robert Flemming, which includes a
11 recommendation. I have also received the sentencing letters
12 submitted by Mr. Villazor dated December 9, 2019, which include
13 letters of Mr. Toner's family and friends. And I have reviewed
14 the government's submission dated December 13, 2019. Is there
15 anything else that I should have received or reviewed,
16 Ms. Zverovich?

17 MS. ZVEROVICH: Nothing else from the government.

18 MR. VILLAZOR: No, your Honor.

19 THE COURT: Mr. Villazor, have you read the presentence
20 report and discussed it with your client?

21 MR. VILLAZOR: I have, your Honor.

22 THE COURT: And, Mr. Toner, have you read the
23 presentence report and discussed it with your attorney?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Are there any objections to the report

JCH7TONS

1 apart from the -- you can remain seated --

2 THE DEFENDANT: Thank you, your Honor.

3 THE COURT: -- apart from the role adjustment?

4 MR. VILLAZOR: Your Honor, one. Paragraph 24, the PSR
5 states that Mr. Toner created the call center in Costa Rica. I
6 don't think there is any dispute that he did not create the
7 call center.

8 THE COURT: Ms. Zverovich.

9 MS. ZVEROVICH: Yes, your Honor, it should be changed
10 to same James Toner managed the call center in Costa Rica.

11 THE COURT: That change will be made.

12 Now, concerning the role adjustment, Mr. Villazor, did
13 you wish to be heard?

14 MR. VILLAZOR: Your Honor, I will largely submit on
15 the submission, our sentencing memo. I think a straight
16 forward application of the application notes for a minor
17 participant applies directly to Mr. Toner's circumstances and a
18 minor role participant is warranted.

19 MS. ZVEROVICH: Your Honor, the government also would
20 rest on its submission for the most part. I think it's clear
21 that in this case a managerial enhancement applies because this
22 defendant was specifically responsible for managing an
23 important part of this fraudulent enterprise for a period of
24 six months. The call center in Costa Rica was the place where
25 customers would call complaining and reporting fraudulent

JCH7TONS

1 activity on their credit card bills, and this defendant was
2 responsible for managing the employees who answered those
3 calls. He was responsible for drafting the fraudulent scripts
4 that he and his employees used to deceive the complaining
5 customers. So, it's clear that while he was not a leader of
6 the overall enterprise, he was a manager of this very important
7 portion of it.

8 THE COURT: How many employees worked at the call
9 center?

10 MS. ZVEROVICH: Your Honor, we actually don't know
11 that, which is one of the reasons why it's a two-level
12 enhancement and not one that calls for specific number of
13 people. We do know there were employees but we do not know how
14 many.

15 THE COURT: And you know that there was more than one
16 presumably.

17 MS. ZVEROVICH: Yes, your Honor.

18 THE COURT: And Mr. Toner managed that facility for
19 six months approximately?

20 MS. ZVEROVICH: Yes, your Honor.

21 THE COURT: Was he physically in Costa Rica during
22 that time?

23 MS. ZVEROVICH: He was for at least a portion of it,
24 yes. And we have e-mails showing that he was the one who was
25 responsible for drafting the fraudulent scripts that were used

JCH7TONS

1 to deceive customers.

2 THE COURT: I find that the role enhancement for being
3 a manager is appropriate. Strictly speaking, Mr. Toner managed
4 one or more individuals in connection with this fraudulent
5 scheme. He was there for some period of time, oversaw the
6 facility there, created scripts which allowed the individuals
7 who worked at the call center to respond to the complaints that
8 were being made in connection with the scheme. From the
9 Court's perspective it's as straightforward as that, so I do
10 find that that enhancement is appropriate.

11 Any other objection to the calculation, Mr. Villazor?

12 MR. VILLAZOR: No, your Honor.

13 THE COURT: In that event, although I am not required
14 to impose a sentence within the guidelines range, I am required
15 to consider that range, and in order to do so I need to do the
16 calculation.

17 Mr. Toner pleaded guilty to a one count superseding
18 information which charged him with conspiracy to commit wire
19 fraud in violation of 18 U.S.C., Section 1343. He pled guilty
20 to the Section 371 offense.

21 That count carries a base offense level of 6. An
22 additional six levels are added because the loss amounted to
23 \$48,000. Two more levels are added because the scheme involved
24 more than ten victims. An additional two levels are added
25 because of the use of sophisticated means. And an additional

JCH7TONS

1 two levels are added because of Mr. Toner's role as a leader,
2 organizer or manager. Three levels are deducted for acceptance
3 of responsibility, yielding a total offense level of 15.
4 Because he has one criminal history point, Mr. Toner is in
5 Criminal History Category I.

6 Ms. Zverovich, any objection to that calculation?

7 MS. ZVEROVICH: No, your Honor.

8 THE COURT: And, Mr. Villazor, any objection to that
9 calculation?

10 MR. VILLAZOR: No, your Honor.

11 THE COURT: In that event, I accept the guidelines
12 calculations in the presentence report, and I find that the
13 Criminal History Category is I, total offense level is 15; that
14 yields a guidelines range of 18 to 24 months.

15 Ms. Zverovich, did you wish to be heard?

16 MS. ZVEROVICH: Your Honor, just very briefly. For
17 the reasons set forth in the government's submission, the
18 government believes that a sentence within the guidelines range
19 of 18 to 24 months is appropriate, as is also the
20 recommendation of the probation office, which recommended an 18
21 month sentence.

22 The conduct in this case with which the Court is
23 familiar was extensive. Customers were defrauded. The
24 defendant worked with other people to place unauthorized
25 charges on their credit card bills for products that for the

JCH7TONS

1 most part they never ordered and were never shipped to them.

2 The defendant, Mr. Toner played, as I just said, a
3 very important part in that criminal enterprise. He was
4 managing the call center in Costa Rica where customers would
5 call to report fraudulent activity, and he would generate
6 scripts in order to deceive those customers, and in order to
7 prevent them from calling the credit card companies or the
8 banks in order to report that fraudulent activity, which is
9 what enabled this scheme to continue to operate.

10 We have e-mails, some of which are cited in the PSR,
11 about the defendant's role, proposals that he would make to his
12 coconspirators James Beckish and Joseph Demaria, including
13 things like -- "we have e-mails for various customers so we can
14 use that to say they opted in to something online" in
15 generating a script to respond to their complaints. Meaning a
16 customer would call, they would say I have a fraudulent charge,
17 and Mr. Toner would instruct other people to tell that person,
18 no, no, no, you actually opted in using this e-mail account, in
19 order to deceive them to think they had opted in and to prevent
20 them from complaining.

21 The conduct went on for a significant period of time.
22 Mr. DeMaria and Mr. Beckish pleaded to a one year conspiracy,
23 and Mr. Toner was managing this call center for at least half
24 of that time period, for six months, which is very significant.

25 In addition to playing that role -- which was really

JCH/TONS

1 his central role -- he did also have other roles in the
2 conspiracy. For example -- and this is I think at PSR
3 paragraph 17 -- in October of 2013 Mr. Toner sent an e-mail to
4 Mr. Beckish about obtaining, purchasing credit card numbers
5 that would then be signed up for charges in order to
6 fraudulently bill consumers. What he wrote, while it's not
7 quoted in the PSR, what he wrote to Mr. Beckish and Mr. Demaria
8 was "I confirm it's about 3500 records with full info that are
9 easily accessible and ready to go. Let me know what we can do
10 with them, and I can help come up with a retention script as
11 well -- meaning a script again that would be used to deceive
12 clients.

13 He also communicated with Mr. Beckish and Mr. Demaria
14 about the websites that were being used as part of the scheme,
15 and specifically suggested to them that more money should be
16 put into those websites to make them "look more legit".

17 So, Mr. Toner was not on the periphery of this
18 conspiracy; he was very much in it, and he played a very
19 important role. And for those reasons the government believes
20 that a guideline sentence would be appropriate.

21 And I would also note -- and this is something we
22 referenced in our sentencing submission -- the defendant's
23 conduct on pretrial release in this case has been rather
24 troubling. He on two separate occasions tested positive for
25 drugs. Your Honor at one point got a violation report from

JCH7TONS

1 pretrial services, and separately it has come to this office's
2 attention that Mr. Toner is under investigation in the District
3 of New Jersey for a very similar scheme in which he played --
4 allegedly -- according to those allegations -- still just
5 allegations, he has not been charged -- but according to the
6 allegations, he played a very similar role of once again
7 managing a call center type facility where people would call in
8 to report fraud.

9 THE COURT: What's the nature of that business, if you
10 know?

11 MS. ZVEROVICH: Your Honor, it relates to -- it
12 relates to time shares. My understanding of that business is
13 it's a company that operates in Florida and New Jersey that
14 takes in clients who have time shares, and who claim that they
15 were defrauded in some way regarding those time shares, and
16 it's an advanced fee scheme investigation.

17 THE COURT: Do you know what the status of that
18 investigation is?

19 MS. ZVEROVICH: I know that in the beginning of this
20 year and in early 2019 the District of New Jersey executed a
21 search warrant at the company, seized a number of documents,
22 and the investigation is ongoing.

23 THE COURT: And I take it Mr. Toner is no longer
24 working there.

25 MS. ZVEROVICH: Your Honor, I actually don't know

JCH7TONS

1 that.

2 THE COURT: OK.

3 MS. ZVEROVICH: So for all of those reasons, your
4 Honor, I think a guideline sentence in this case would serve
5 the goals of sentencing, it would afford just punishment, it
6 would be important to send a message to this defendant that he
7 can't just continue defrauding people and getting away with it.

8 These crimes, as your Honor knows, are very difficult
9 to investigate, and a message needs to be sent both to
10 defendant and to the community that these crimes are serious
11 and will not be treated lightly. Thank you, your Honor.

12 THE COURT: One question for you. What is the
13 government's view of Mr. Toner's culpability relative to his
14 codefendants and in particular Mr. Witcher?

15 MS. ZVEROVICH: Your Honor, in the government's view
16 Mr. Toner certainly is less culpable than Mr. Beckish and
17 Mr. Demaria who ran the operation, but he is significantly, in
18 our view, more culpable than Mr. Witcher, again because he
19 exercised a managerial role over a very important portion of
20 this criminal scheme.

21 Mr. Witcher's role in the scheme was just to find
22 people who were willing to put their names on some bank
23 documents in order to open accounts. Mr. Toner was managing a
24 center where people would call in to report fraudulent
25 activity. And, in addition to that, he was advising

JCH7TONS

1 Mr. Beckish and Mr. Demaria on important parts of the business,
2 including how to get credit card numbers to be used in the
3 fraud, and including, you know, how to make the website look
4 more legitimate so that the fraud could continue going. So in
5 our view he is more culpable than Mr. Witcher.

6 THE COURT: Thank you.

7 Mr. Villazor.

8 MR. VILLAZOR: Thank you, your Honor. Your Honor, on
9 behalf of Mr. Toner we would submit that a noncustodial
10 sentence is sufficient but not greater than necessary as a just
11 punishment for Mr. Toner.

12 To address a couple of points raised by the government
13 in the offense conduct.

14 Yes, this was an extensive fraud -- that is certainly
15 not in dispute -- but to characterize Mr. Toner's conduct as
16 very important to it, I think over emphasizes his job title as
17 manager and neglects the salient fact that the call center
18 preexisted Mr. Toner's involvement, and the call center
19 continued to exist after. He was there only for six months.
20 And the circumstances into which he actually joined this
21 conspiracy was kind of a slow evolving process. He didn't join
22 it with the sole purpose of defrauding consumers. He had his
23 own business in Florida which fell apart due to an unfounded
24 Florida investigation, and he lost all of his money in legal
25 fees. And unfortunately he got hooked up with Demaria and

JCH7TONS

1 Beckish, childhood friends who invited him to join, and he went
2 to Costa Rica and managed that call center for about six
3 months.

4 The important part, your Honor -- and particularly
5 when you're considering the need for specific deterrence -- is
6 that Mr. Toner left the call center. He left it after six
7 months, well before the government started investigating and
8 well before he was arrested in June of 2017.

9 So, to classify him as very important to the scheme I
10 think overemphasizes his job title. And certainly he had overt
11 acts in that conspiracy, but his limited role and his salaried
12 role, which was \$48,000, certainly places him well below all
13 the coconspirators.

14 The government talks about other codefendants who were
15 involved like Mr. Witcher and classifies him below that, but
16 Mr. Witcher was incentivized to assist in the conspiracy to the
17 tune of \$470,000. That pales in comparison to Mr. Toner's
18 salaried employment of \$48,000.

19 As to the proffer by the government as to this
20 District of New Jersey investigation, the search warrant was
21 conducted on the business, not on Mr. Toner. As far as we are
22 aware, he has not been named as a target or a subject, and he
23 has not been violated by pretrial services for any unlawful
24 conduct related to his employment with that District of New
25 Jersey investigation.

JCH7TONS

1 THE COURT: What insight, if any, can you give me
2 concerning that investigation?

3 MR. VILLAZOR: I don't have any insight to that, your
4 Honor. I am only representing Mr. Toner as to the sentencing
5 in this case, so I don't have any insight other than what the
6 government has proffered to the Court.

7 THE COURT: I appreciate that. What was Mr. Toner
8 doing in that job, if you know?

9 MR. VILLAZOR: I believe he it was related to a call
10 center as well, your Honor. As to the mechanics of it, I am
11 just not familiar with it. I'm not comfortable and not
12 familiar enough with it to adequately brief the Court on what
13 goes into it. He is earning a salary, and he is supporting his
14 family, and this is something that he joined well after he left
15 the conspiracy with Mr. Beckish and Mr. Demaria.

16 THE COURT: Is he working at that business currently?

17 MR. VILLAZOR: I believe --

18 THE DEFENDANT: Yes, your Honor.

19 MR. VILLAZOR: Yes, your Honor.

20 THE COURT: OK.

21 THE DEFENDANT: It's --

22 MR. VILLAZOR: Your Honor, my understanding from
23 Mr. Toner is it's a fee recovery phone system in which they are
24 assisting victims to recover from fraud. They are fraud
25 victims, and if they can recover then they get paid. Again,

JCH7TONS

I'm sorry, your Honor, I am not really up to speed on what the District of New Jersey investigation is looking at with respect to that business.

THE COURT: So they're working with victims of timeshare fraud?

MR. VILLAZOR: Timeshare fraud, for a fee.

THE COURT: OK.

MR. VILLAZOR: And, your Honor, to the specific deterrence that was raised by the government with respect to this District of New Jersey investigation, again he is not a target or a subject as far as we know. And as to his conduct in this charged conspiracy, he walked away. After six months he walked away, before any government investigation started with him, before he was arrested. And as for a need for specific deterrence, I think it's minimal.

I turn your Honor to the 3553(a) factors, which is obviously the strength of our sentencing submission.

Mr. Toner -- notwithstanding his admitted criminal actions in this criminal conspiracy -- has been exemplar. He has led a very troubled life. He is a product of an abusive stepfather, an abusive father, a mother who was addicted to drugs. And he has his own addictions, your Honor, that he for the most part has successfully battled.

The government has highlighted certainly his violations on pretrial release, and it's an addiction he

JCH7TONS

1 continues to treat, and he has been for the most part
2 successful on that.

3 He has his family, your Honor. His wife Scarlet, and
4 his daughter Victoria, 15, and his son James, Jr., they are all
5 in court here today to show their support and their love for
6 their father. I have certainly highlighted, and Scarlet has
7 submitted, I think an important letter for this Court to
8 consider as to the emotional support that Mr. Toner has been
9 for his children and the emotional support he has been to his
10 wife. And, most importantly, he has been physical support for
11 his wife who has been suffering from various medical issues
12 from a serious fall that she suffered in February of 2018, all
13 which postdate his removal from the criminal conspiracy. She
14 is in court; her kids are in court. I want to touch on this
15 delicately, but she is physically unable to manage her
16 household. Aside from working -- where Mr. Toner is the one
17 who is financially supporting his family -- she is physically
18 unable to brush her hair, or get dressed, or drive, or do the
19 daily things that are needed by any member of the family, and
20 Mr. Toner has taken on that responsibility.

21 I would add, your Honor, that Mr. Toner, he wanted his
22 children here to show how he has accepted responsibility and to
23 each them a lesson -- teach them a lesson of associating with
24 wrong people and making bad choices -- and as a deterrence,
25 it's actually to his children to show the mistakes he has made

JCH7TONS

1 and has admitted up to. It's an important life lesson that he
2 wants his children to learn.

3 Apart from his family, his immediate yet family, your
4 Honor, you saw the letters that his friends and family
5 submitted. His sisters who live in Florida, who practically
6 see him as a father figure, are emotionally supportive of him.
7 They couldn't be here today given the travel costs that are
8 involved, but they are a support system that really weigh
9 heavily in favor of Mr. Toner.

10 And I respectfully submit that a noncustodial
11 sentence, a sentence of probation, would be a sufficient
12 sentence for Mr. Toner. He certainly has accepted
13 responsibility. He is here to face sentencing, but his remorse
14 and the combination of his limited offense conduct, and the
15 personal history and circumstances of his family background,
16 warrant a sentence of probation. Thank you.

17 THE COURT: Thank you, Mr. Villazor.

18 Mr. Toner, you have an absolute right to address the
19 Court before I impose sentence. Is there anything that you
20 want to say?

21 THE DEFENDANT: Yes, your Honor. I would like to
22 apologize to any and all victims that were harmed by my
23 criminal actions and the criminal actions of my coconspirators.
24 Also I would like to apologize to my family, wife and two
25 children for letting them down, failing them as a husband and

JCH7TONS

1 father. I made a terrible mistake to take part in defrauding
2 and stealing from others, and I am prepared to accept the
3 consequences of my actions.

4 I'm doing the best to rebuild my life and earn back my
5 dignity, working full-time to support my family and at home,
6 trying to be the best husband and father I can. I respectfully
7 ask the Court for leniency. Thank you, your Honor.

8 THE COURT: Thank you, Mr. Toner.

9 In deciding what sentence to impose, in addition to
10 the sentencing guidelines and the commentary thereto. I have
11 considered all of the factors set forth in Section 3553(a) of
12 Title 18 of the United States Code, including the nature and
13 circumstances of the offense and Mr. Toner's history and
14 characteristics. I have considered the need for the sentence
15 imposed to reflect the seriousness of the offense, to promote
16 respect for the law, to provide just punishment for the
17 offense, to afford adequate deterrence to criminal conduct and
18 to protect the public from further crimes.

19 I have considered particularly to this case the need
20 to avoid unwarranted sentencing disparities among similarly
21 situated defendants and the need to provide restitution to any
22 victims of the offense.

23 Having considered all of these factors, it is my
24 intention to impose a sentence of three months' incarceration,
25 followed by three years of supervised release, with the special

JCH7TONS

1 condition that the first three months of supervised release be
2 spent on home confinement, during which Mr. Toner will be
3 allowed to work.

4 I will impose a \$100 special assessment. I will not
5 impose a fine, as I do not believe that he is able to pay a
6 fine.

7 I believe that this sentence is sufficient but not
8 greater than necessary to comply with the purposes of
9 sentencing for the following reasons:

10 I note, as I must, that I do find this to be a very
11 serious offense. It's an offense with dozens if not hundreds
12 of victims, all of whom were deprived of money in a rather
13 insidious way. Many of them probably did not know that they
14 were being defrauded for months. There may be people out there
15 to this day that don't know that they were defrauded. In the
16 process, Mr. Toner and his codefendants garnered hundreds of
17 thousands -- if not millions -- of dollars for their own
18 purposes. And all of the individuals who have come before me
19 that I have sentenced in connection with this scheme are
20 people, individuals like Mr. Toner, who were not without
21 talent.

22 Mr. Toner, before his involvement with these
23 individuals, appeared to be a very successful businessman who
24 was earning a very good salary running a business that
25 unfortunately -- and I take him at his word -- was destroyed by

JCH7TONS

1 an investigation that should not have happened, and he had to
2 begin again. And, in doing so, he associated himself with
3 individuals whom though certainly he knew and knew from his
4 childhood, he knew were involved in a fraudulent scheme. He
5 decided to play an important role -- and I do find that it was
6 an important role. Whether the call center was there when he
7 started or not, whether it was there after he left, he was a
8 manager. He was directing people in what to say when
9 individuals would correctly call in to say, you know, I'm being
10 defrauded, I didn't make these charges, please give me my money
11 back. And he would put them off or direct others into telling
12 them how to put them off.

13 As I indicated, Mr. Toner was an individual who knew
14 better, who had been successful in the past and who clearly is
15 not afraid of doing work, who understands that he has to
16 support his family and, you know, could have done something
17 else, an individual that I believe had options and did not have
18 to follow this.

19 So, I do find that this is serious conduct for which
20 some level of incarceration is appropriate for specific and
21 general deterrence. However, I do not believe that a sentence
22 even at the low end of the guideline range is appropriate.

23 As Mr. Villazor points out, despite his obvious
24 intelligence, Mr. Toner did not have an easy life growing up.
25 He had parents who were in many regards absent at best and at

JCH7TONS

1 worst abusive.

2 He had mental health issues that were not adequately
3 treated apparently, and those issues no doubt sprung from that
4 lack of attention early on and to which he has been battling
5 even to today. So, I do find that some mitigation is
6 appropriate for having had to go through that and then get to
7 the point where he is today.

8 I also find that by all accounts -- I have read the
9 letters that were submitted very carefully -- the people who
10 know him best, those who are closest to him, report that he is
11 a dutiful father and husband and son who was working as hard as
12 he can even now to take care of his family.

13 I do understand that it will be a difficult for the
14 family to be without him for some period of time, but as
15 difficult as this may be for the family, his wife and children
16 to hear this, it's necessary that some period of incarceration
17 be imposed.

18 And, you know, I do impose a period of supervised
19 release that he serve some of that at home and that he be
20 allowed to work, and I do that because of the fact that his
21 family does need him present and needs him working as much as
22 possible.

23 So with that, does counsel know of any legal reason
24 other than what has already been argued as to why the sentence
25 should not be imposed as indicated?

JCH7TONS

1 MS. ZVEROVICH: No, your Honor.

2 THE COURT: Mr. Villazor?

3 MR. VILLAZOR: No, your Honor.

4 THE COURT: In that event --

5 MS. ZVEROVICH: Your Honor, just to add, we also do
6 have consent proposed orders of forfeiture and restitution,
7 both in the amount of \$48,000 for the Court's consideration.

8 THE COURT: Do you have them ready for me to execute?

9 MS. ZVEROVICH: Yes, your Honor.

10 THE COURT: Mr. Villazor? Mr. Villazor, did you want to
11 say something?

12 MR. VILLAZOR: No, your Honor.

13 THE COURT: Very well. It is the judgment of this
14 Court that Mr. Toner be sentenced to three months under one
15 count of conviction, to be followed by three years of
16 supervised release, with the special condition that the first
17 three months of supervised release be spent on home confinement
18 with electronic monitoring, during which time Mr. Toner will be
19 allowed to work.

20 The standard conditions 1 through 12 of supervised
21 release will apply, as well as the following mandatory and
22 special conditions.

23 The mandatory conditions are that you not commit
24 another federal, state or local crime; that you must not
25 unlawfully possess a controlled substance; and you must refrain

JCH7TONS

from the unlawful use of a controlled substance and submit to one drug test within 15 days of release from imprisonment, and at least two periodic drug tests thereafter as determined by probation.

The special conditions are that you will participate in an outpatient program approved by the U.S. Probation Office, which program may include testing to determine whether you have reverted to using drugs or alcohol.

You must provide the probation officer with access to any requested financial information. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

You must participate in an outpatient mental health treatment program approved by the U.S. probation office and must continue to take any prescribed medications unless otherwise instructed by the healthcare provider. And if you are sentenced to supervision and you move out of the district, it is recommended that you be supervised by the district of residence.

You are ordered to pay the mandatory special assessment of \$100, which shall be due immediately.

I will not impose a fine, because I find that you are not able to pay a fine. And I will enter the order of restitution in the amount of \$48,000, and consent preliminary

JCH7TONS

1 order of forfeiture.

2 Are there any open counts?

3 MS. ZVEROVICH: Yes, your Honor, the government moves
4 to dismiss all the prior indictments and charges against
5 Mr. Toner.

6 THE COURT: That application is granted. I take it
7 that there was a waiver of appeal in his plea agreement, Ms.
8 Zverovich.

9 MS. ZVEROVICH: Yes, your Honor, the plea agreement
10 contains the standard waiver.

11 THE COURT: Because of that waiver in your agreement
12 with the government, I believe I sentenced you below the
13 stipulated guidelines range. That effectively means that your
14 right to appeal my sentence is severely restricted. However,
15 Mr. Villazor, will you assure me that you will promptly and
16 thoroughly discuss with Mr. Toner the effect of the plea
17 agreement on his appellate rights?

18 MR. VILLAZOR: I will, your Honor.

19 THE COURT: Do you have any other applications,
20 Mr. Villazor?

21 MR. VILLAZOR: Yes, your Honor, one, that Mr. Toner be
22 allowed to voluntarily surrender.

23 THE COURT: That application is granted.

24 MR. VILLAZOR: And, two, that the Court recommend to
25 Bureau of Prisons that he be housed in a location closest to

JCH7TONS

1 his family.

2 THE COURT: Where is his family? What town?

3 MR. VILLAZOR: Down in south Jersey, your Honor.

4 THE COURT: I will make that recommendation.

5 Mr. Toner, you should be aware that although I can recommend a
6 location, the Bureau of Prisons doesn't have to follow my
7 recommendation. They typically try to do so, but please
8 understand that all I can do is recommend. But I will make
9 that recommendation. Anything else, Mr. Villazor?

10 MR. VILLAZOR: No, your Honor. Thank you.

11 THE COURT: Ms. Zverovich, anything else from you?

12 MS. ZVEROVICH: No, your Honor, but we would ask that
13 your Honor set a date by which Mr. Toner will self surrender.

14 THE COURT: Let's set a date six weeks out,
15 Ms. Rivera.

16 MR. VILLAZOR: Your Honor, sorry. With the Court's
17 permission, can we get that three months out? Mr. Toner has a
18 lot of family obligations to get squared away, and that would
19 give him sufficient time for financial and physical help.

20 THE COURT: Any objection?

21 MS. ZVEROVICH: No, your Honor.

22 THE COURT: Very well. Three months out, Ms. Rivera?

23 DEPUTY COURT CLERK: March 17, 2020.

24 THE COURT: And if you are not designated by that
25 time, Mr. Villazor, just contact chambers, and we will arrange

JCH7TONS

1 for further adjournment if necessary.

2 MR. VILLAZOR: Yes, your Honor.

3 THE COURT: Anything else?

4 MS. ZVEROVICH: Nothing else, your Honor. Thank you.

5 THE COURT: Mr. Villazor?

6 MR. VILLAZOR: No.

7 THE COURT: Very well. Then we are adjourned.

8 Mr. Toner, good luck to you, sir.

9 - - -

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25